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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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John David Tucker

KCC-16,190

5302

35844

7590

05/25/2004

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EXAMINER

COLE, ELIZABETH M

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/788,177

Applicant(s)

TUCKER ET AL.

Examiner

Elizabeth M. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21, 23-25 and 27-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 23-25 and 27-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7/28/03.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/31/03 has been entered.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-6, 10-13, 16-18, 23-25, 27-28, 31-33, 35-37, 41, 45 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 1,070,736 A to Lee et al. Lee et al discloses a stretch-thinned (p. 3, line 47) film comprising 30-100 parts of a linear, low density polyethylene polymer which corresponds to the matrix polymer, (p. 3, line 3); 1-30 weight parts of a polypropylene resin and 1 to 3- parts of an ethylene-propylene copolymer (p. 3, lines 4-5) and 50-220 weight parts of an inorganic filler, (p. 3, line 6). The film can be bonded to a nonwoven fabric (p. 2, line 47). With regard to the limitation that some of the component polymers are from laminate waste, the source of the polymer would not make a difference with regard to the final product.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-2, 4-13, 16-21,, 23-25, 27-33, 35-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al, EP 1,070,736 in view of Stopper et al, WO 98/44025. Lee et al discloses a stretch-thinned film as set forth above. Lee et al differs from the claimed invention because Lee et al does not teach further incorporating incompatible polymers such as styrene, nylon and polyester into the film. Stopper et al teaches that a biodegradable stretch-thinned film comprising a first olefin polymer, a filler and additional polymeric material may comprise polymers such as styrene, nylon and polyester. See pages 7-8. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the additional polymers into the material of Lee et al. One of ordinary skill in the art would have been motivated to employ styrene, nylon and polyester in the composition of Lee et al by the teaching of Stopper that such materials are suitable for use in breathable stretch thinned films. Lee et al also differs from the claimed invention because Lee et al does not teach adding additional layers to the film. Stopper et al teaches that stretch-thinned films may be bonded to additional layers which correspond to the claimed skin layers in order to provide support to the thinned films and to use the stretch-thinned films in a variety of applications. See page 11. It would have been obvious to have incorporated additional layers into the material of Lee et al in order to provide support to the films and to have incorporated the films into a variety of articles. Lee et al also does not teach that the nonwoven fabrics comprise spunbonded, air laid and meltblown. Stopper et al teaches that conventional nonwoven fabrics including spun bonded, meltblowns and carded webs can be employed as the nonwoven to which the stretch-thinned film is bonded. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed the particular types of nonwovens disclosed by

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Stopper as being useful as the nonwoven layer in forming laminates of the films and nonwoven fabrics.

5. Claims 3, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Stopper as applied to claims above, and further in view of Burns, Jr et al, U.S. Patent No. 6,328,723. Lee does not teach employing ultra low density polyethylene as the matrix polymer. Burns, Jr. et al teaches at col. 6, lines 35-50 that ultra low density polyethylene is known to be equivalent to the polymeric materials set forth in Stopper for the purpose of making filled, stretch-thinned breathable films. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed ultra low density polyethylene. One of ordinary skill in the art would have been motivated to employ ultra low density polyethylene because of the teaching of Burn, Jr. that ultra low density polyethylene is equivalent to the polymers set forth in Lee et al.

6. Claims 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al in view of JP 10-245042. Lee does not disclose employing a single-site catalyzed polyethylene as the matrix polymer. JP '042 discloses that single-site catalyzed polyethylene may be employed as a layer in a porous laminate comprising nonwoven fabric layers and porous film layers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed a single-site catalyzed polyethylene in the material of Lee. One of ordinary skill in the art would have been motivated to employ a single-site catalyzed polyethylene because JP '042 teaches that such polymers are suitable for use in constructing laminates which comprise breathable polymeric layers and nonwoven fabric layers.

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7. Applicant's arguments filed 10/31/03 have been fully considered but are moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (703) 872-9306.


Elizabeth M. Cole
Primary Examiner
Art Unit 1771

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